

806 KAR 37:010. Insurance holding company systems.

RELATES TO: KRS 304.1-050, 304.6, 304.24-390, 304.24-400, 304.24-415, 304.33, 304.37-010, 304.37-020, 304.37-030, 304.37-110, 304.37-120, 304.37-130

STATUTORY AUTHORITY: KRS 304.2-110, 304.37-060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. KRS 304.37-060 authorizes the commissioner to promulgate administrative regulations as may be necessary to carry out KRS Chapter 304.37. This administrative regulation establishes procedural requirements necessary to carry out the provisions of KRS Chapter 304.37, insurance holding company systems, and statutes relating to the merger and acquisition of domestic insurers.

Section 1. Definitions.

- (1) "Commissioner" is defined by KRS 304.1-050(1).
- (2) "Department" is defined by KRS 304.1-050(2).
- (3) "Ultimate controlling person" means that person which is not controlled by any other person.

Section 2. Forms - General Requirements. (1)(a) Forms A, B, C, D, E, and F shall specify the information required to be provided in the preparation of the statements required by KRS 304.37-120, 304.37-020 and 304.37-030. In addition, Form A shall be used as to mergers and acquisitions of domestic insurers referred to in KRS 304.24-390. They are not intended to be blank forms which are to be filled in.

(b) Filed statements shall contain the numbers and captions of all items, but the text of the items may be omitted if the answers are prepared in a manner as to indicate clearly the scope and coverage of the items.

(c) All instructions, whether appearing under the items of the form or elsewhere, shall be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer is in the negative, a statement to that effect shall be made.

(2)(a) Duplicate originals of each statement including exhibits and all other papers and documents filed as a part of the statement shall be filed with the commissioner by personal delivery or mail addressed to: Financial Standards and Examination Division, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602.

(b) A copy of Form C shall be filed in each state in which an insurer may do business, if the insurance regulatory official of that state has notified the insurer of its request in writing, in which case the insurer has fifteen (15) days from receipt of the notice to file the form.

(c) The duplicate original shall be manually signed in the manner prescribed on the form.

(d) Unsigned copies shall be conformed.

(e) If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of the power of attorney or other authority shall also be filed with the statement.

(3) If an applicant requests a hearing under KRS 304.37-120(4)(b), in addition to filing the Form A with the commissioner, the applicant shall file a copy of Form A with the National Association of Insurance Commissioners in electronic form.

(4) Statements shall be prepared electronically. All copies of any statements, financial statements, or exhibits shall be easily readable and suitable for review and reproduction. Debits in credit categories and credits in debit categories shall be designated so as to be clearly

distinguishable on photocopies. Statements shall be in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency normally shall be converted into United States currency.

Section 3. Forms - Incorporation by Reference, Summaries and Omissions. (1)(a) Information required by any item on Forms A, B, D, E, or F may be incorporated by reference in answer or partial answer to any other item.

(b) Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item on Forms A, B, D, E, or F if the document or paper is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits if the documents are extensive.

(c) Documents currently on file with the commissioner which were filed within three (3) years shall not be attached as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that the material is to be incorporated by reference in an answer to the item.

(d) Material shall not be incorporated by reference if the incorporation may render the statement incomplete, unclear, or confusing.

(2)(a) If an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document.

(b) In addition to the statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the commissioner which was filed within three (3) years and may be qualified in its entirety by the reference.

(c) If two (2) or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties, the dates of execution, or other details, a copy of only one (1) of the documents shall be filed with a schedule identifying the omitted documents and setting forth the material details in which the documents differ from the filed documents.

Section 4. Forms - Information Unknown or Unavailable and Extension of Time to Furnish.

(1) If it is impractical to furnish any required information, document, or report when it is required to be filed, there shall be filed with the commissioner a separate document that:

(a) Identifies the information, document, or report in question;

(b) States why its filing when required is impractical; and

(c) Requests an extension of time for filing the information, document, or report to a specified date.

(2) The request for extension shall be granted unless the commissioner within sixty (60) days after receipt enters an order denying the request.

Section 5. Forms - Additional Information and Exhibits. (1) In addition to the information expressly required to be included in Forms A, B, C, D, E, and F, the commissioner may request further material information as may be necessary to make the information contained in the filing not misleading and which may include supplemental financial information, supporting contracts and agreements, and filings with other regulatory bodies.

(2) The person filing may also file exhibits in addition to those expressly required by the statement. These exhibits shall clearly indicate the subject matters to which they refer.

(3) Changes to Forms A, B, C, D, E, or F shall include on the top of the cover page the phrase: "Change No. (insert number) to" and shall indicate the date of the change and not the

date of the original filing.

Section 6. Subsidiaries of Domestic Insurers. The authority to invest in subsidiaries under KRS 304.37-110 shall be in addition to any authority to invest in subsidiaries which may be contained in any other provision of the Insurance Code, KRS Chapter 304, and corresponding administrative regulations.

Section 7. Acquisition of Control - Statement Filing. A person required to file a statement pursuant to KRS 304.24-390, or 304.37-120 shall furnish the required information on Form A, and on Form E, in accordance with Section 10 of this administrative regulation.

Section 8. Amendments to Form A. The applicant shall promptly advise the commissioner of any changes in the information furnished on Form A arising subsequent to the date upon which the information was furnished, but prior to the commissioner's disposition of the application.

Section 9. Acquisition of Certain Insurers. (1) If the person being acquired is a "domestic insurer" solely because of the provisions of KRS 304.37-120(1)(a), the name of the domestic insurer on the cover page shall be indicated as follows: "ABC Insurance Company, a subsidiary of XYZ Holding Company".

(2) If an insurer referred to in subsection (1) of this section is being acquired, references to "the insurer" contained in Form A shall refer to both the domestic subsidiary insurer and the person being acquired.

Section 10. Pre-Acquisition Notification. (1) If a domestic insurer, including any person controlling a domestic insurer, is proposing a merger or acquisition pursuant to KRS 304.37-120, that person shall file a pre-acquisition notification form, Form E.

(2) If a non-domiciliary insurer licensed to do business in the Commonwealth is proposing a merger or acquisition pursuant to KRS 304.37-130, that insurer shall file a pre-acquisition notification form, Form E. A pre-acquisition notification form shall not be filed if the acquisition meets the requirements of KRS 304.37-130(2)(b).

(3) In addition to the information required by Form E, the commissioner may require an expert opinion as to the competitive impact of the proposed acquisition.

Section 11. Annual Registration of Insurers - Statement Filing. An insurer required to file an annual registration statement pursuant to KRS 304.37-020 shall furnish the required information on Form B.

Section 12. Summary of Registration - Statement Filing. An insurer required to file an annual registration statement pursuant to KRS 304.37-020 shall also furnish information required on Form C. An insurer shall file a copy of Form C in each state in which the insurer is authorized to do business, if requested by the insurance regulatory official of that state.

Section 13. Alternative and Consolidated Registrations. (1) Any authorized insurer may file a registration statement on behalf of any affiliated insurer or insurers which are required to register under KRS 304.37-020. A registration statement may include information not required by KRS Chapter 304.37 regarding any insurer in the insurance holding company system even if the insurer is not authorized to do business in Kentucky. In lieu of filing a registration statement on Form B, the authorized insurer may file a copy of the registration statement or similar report which it is required to file in its state of domicile if:

(a) The statement or report contains substantially similar information required to be furnished on Form B; and

(b) The filing insurer is the principal insurance company in the insurance holding company system.

(2) The question of whether the filing insurer shall be the principal insurance company in the insurance holding company system shall be a question of fact. An insurer filing a registration statement or report in lieu of Form B on behalf of an affiliated insurer shall set forth a brief statement of facts which substantiates the filing insurer's claim that it is the principal insurer in the insurance holding company system.

(3) With the prior approval of the commissioner, an unauthorized insurer may follow any of the procedures which may be done by an authorized insurer under subsection (1) of this section.

(4) Any insurer may take advantage of the provisions of KRS 304.37-020(9) or (10) without obtaining the prior approval of the commissioner. However, the commissioner may require individual filings if consolidation renders the material incomplete, unclear, or confusing.

Section 14. Disclaimers and Termination of Registration. (1) A disclaimer of affiliation or a request for termination of registration claiming that a person shall not, or will not upon the taking of some proposed action, control another person, referred to as the subject, shall contain the following information:

(a) The number of authorized, issued, and outstanding voting securities of the subject;

(b) With respect to the person whose control is denied and all affiliates of this person, the number and percentage of shares of the subject's voting securities which are held of record or known to be owned beneficially, and the number of these shares concerning which there is a right to acquire, directly or indirectly;

(c) All material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of this person; and

(d) A statement explaining why the person shall not be considered to control the subject.

(2) A request for termination of registration shall be granted unless the commissioner, within thirty (30) days after he or she receives the request, notifies the registrant otherwise.

Section 15. Transactions Subject to Prior Notice - Notice Filing. (1) An insurer required to give notice of a proposed transaction pursuant to KRS 304.37-030 shall furnish the required information on Form D.

(2) Agreements for cost sharing services and management services shall at a minimum and as applicable:

(a) Identify the person providing services and the nature of the services;

(b) Set forth the methods to allocate costs;

(c) Require timely settlement at least on a quarterly basis and in compliance with KRS Chapter 304.6;

(d) Prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement;

(e) State that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance;

(f) Define books and records of the insurer to include all books and records developed or maintained under or related to the agreement;

(g) Specify that all books and records of the insurer are and remain the property of the insurer and are subject to control of the insurer;

(h) State that all funds and invested assets of the insurer are the exclusive property of the

insurer, held for the benefit of the insurer, and are subject to the control of the insurer;

(i) Include standards for termination of the agreement with and without cause;

(j) Include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services;

(k) Specify that, if the insurer is placed in receivership or seized by the commissioner under KRS Chapter 304.33:

1. All of the rights of the insurer under the agreement extend to the receiver or commissioner; and

2. All books and records will immediately be made available to the receiver or the commissioner, and shall be turned over to the receiver or commissioner immediately upon the receiver or the commissioner's request;

(l) Specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership pursuant to KRS Chapter 304.33; and

(m) Specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the commissioner under KRS Chapter 304.33, and will make these available to the receiver for as long as the affiliate continues to receive timely payment for services rendered.

Section 16. Enterprise Risk Report. The ultimate controlling person of an insurer required to file an enterprise risk report pursuant to KRS 304.37-020(13) shall furnish the required information on Form F.

Section 17. Extraordinary Dividends and Other Distributions. (1) Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:

(a) The amount of the proposed dividend;

(b) The date established for payment of the dividend;

(c) A statement as to whether the dividend is to be in cash or other property and, if in property, a description of the property, its cost, and its fair market value together with an explanation of the basis for valuation;

(d) A copy of the calculations determining that the proposed dividend is extraordinary. The work paper shall include the following information:

1. The amounts, dates, and form of payment of all dividends or distributions, including regular dividends but excluding distributions of the insurers own securities, paid within the period of twelve (12) consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year.

2. Surplus as regards policyholders, total capital and surplus, as of the 31st day of December next preceding;

3. If the insurer is a life insurer, the net gain from operations for the twelve (12) month period ending the 31st day of December next preceding;

4. If the insurer is not a life insurer, the net income less realized capital gains for the twelve (12) month period ending the 31st day of December next preceding and the two (2) preceding twelve (12) month periods; and

5. If the insurer is not a life insurer, the dividends paid to stockholders excluding distributions of the insurer's own securities in the preceding two (2) calendar years.

(e) A balance sheet and statement of income for the period intervening from the last annual statement filed with the commissioner and the end of the month preceding the month in which the request for dividend approval is submitted; and

(f) A brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.

(2) Subject to KRS 304.37-030(2), each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen (15) business days following the declaration, including the same information required by subsection (1)(d) of this section.

Section 18. Adequacy of Surplus. (1) In determining the adequacy and reasonableness of an insurer's surplus pursuant to KRS 304.37-030(4), no single factor shall be controlling. The commissioner shall consider the net effect of all of these factors plus other factors bearing on the financial condition of the insurer.

(2) In comparing the surplus maintained by other insurers, the commissioner shall consider the extent to which each of these factors varies from insurer to insurer and in determining the quality and liquidity of investments in subsidiaries, the commissioner shall consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.

Section 19. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Form A Statement Regarding the Acquisition of Control of or Merger With a Domestic Insurer," October 2014;

(b) "Form B Insurance Holding Company System Annual Registration Statement," August 2014;

(c) "Form C Summary of Changes to Registration Statement," August 2014;

(d) "Form D Prior Notice of a Transaction," August 2014;

(e) "Form E Pre-Acquisition Notification Form Regarding the Potential Competitive Impact of a Proposed Merger or Acquisition by a Non-Domiciliary Insurer Doing Business in this State or by a Domestic Insurer," August 2014; and

(f) "Form F Enterprise Risk Report," August 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the Department of Insurance Internet Web site, <http://insurance.ky.gov>. (19 Ky.R. 343; Am. 722; eff. 9-10-1992; TAm eff. 8-9-2007; 41 Ky.R. 602; 1059; eff. 12-5-2014.)